

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 511 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAJKOT DISTRICT PANCHAYAT

Versus

GUJARAT MAJLOOR MAHAJAN SANGH

Appearance:

1. Special Civil Application No. 511 of 1998
MR HS MUNSHAW for Petitioner
MR AK CLERK for Respondent

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/01/2005

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned counsel for the
petitioner and Mr.A.K.Clerk, learned counsel for the

respondent.

#. In the present petition, the District Panchayat, Rajkot, has challenged the award passed by the Labour Court, Rajkot, in Reference (LCD) No.32 of 1988 dated 10.6.1997. The Labour Court allowed the reference, and as per schedule, concerned workmen are made permanent from the date of their joining and it is was further declared that they are entitled for the pay-scale, D.A., leave salary, provident fund, bonus, medical allowance, washing allowance, etc. and it was further directed that arrears be paid within thirty days from the date of publication of award.

#. Mr.H.S.Munshaw, learned counsel for the petitioner, submitted that all the workmen under the respondent-Gujarat Majoor Mahajan Sangh are daily rated employees working with the petitioner and as and when necessity of work arises, they are called, and therefore, they are not entitled for benefit of permanency as per the dispute raised by them. He also submitted that Government Resolution dated 17.10.1988 has been made applicable to such employees who are entitled for such benefit as per the said G.R. Mr.Munshaw further submitted that as and when additional work is required in Panchayat, such employees are recruited and engaged and when work is over, their services are terminated by the Panchayat. The benefit under the G.R. dated 17.10.1988 has been extended in favour of such employees who are entitled for the same and to those who satisfy the conditions incorporated in the said Resolution. Therefore, Mr.Munshaw, submits, once the benefit of G.R. dated 17.10.1988 is extended in favour of workmen, the reference ought to have been rejected by the Labour Court.

#. On the other hand, Mr.A.K.Clerk, learned counsel for the respondent, submitted that these workmen are working since past many years and they were not engaged for any additional work in Panchayat. He submitted that before the Labour Court, the respondent-Union produced a copy of certain awards passed by the Tribunal/ Labour Court which are identical in nature namely Reference (IT) Nos.162 of 1999, 877 of 1984, and 86 of 1985, and decision of this Court in SCA No.1889 of 1988. He submitted that in all these References, the Industrial Tribunal granted benefit of permanency in favour of similarly situated daily wagers performing similar kind of work. It is also submitted that said awards were challenged by the Panchayat or State Government before this Court and said petitions as well as Letters Patent Appeals were also

dismissed by this Court. Mr.Clerk further relied upon the order passed in SCA No.918 of 1997 and 8015 of 1996 decided on 10.9.1998. Mr.Clerk also relied upon the decision of the Division Bench of this Court in LPA No.605 of 1999 and 1199 of 2003. In all these decisions, the award passed by the Tribunal granting benefit of permanency in favour of such daily wagers has been confirmed and the appeals filed by the State were rejected. Mr.Clerk submitted that therefore, identical question has been examined by this Court, by Single Bench as well as by Division Bench, and in this petition also identical challenge is made by petitioner, and therefore, this petition is required to be dismissed.

#. I have considered the rival contentions raised by both the learned counsel. I have also perused the award passed by the Labour Court, Rajkot. The dispute raised by the Union is to grant benefit of permanency to the workmen working in Rajkot District Panchayat and demanding certain benefits from the Panchayat. Statement of claim has been filed by the Union in support of its demand and the petitioner filed written statement vide ex.10 objecting the demand and pointing out the fact that benefit of GR dated 17.10.1988 has been extended in favour of concerned workmen. The respondent-Union has produced list vide. ex.12 as well as the petitioner has produced seniority list vide ex.14. Both the parties produced certain documents on record and thereafter before the Labour Court, one Mr.H.R.Mehta was examined vide ex.30, deposed before the Labour Court that he was working since more than ten years and similar other workmen whose names are mentioned in the schedule are also working for more than ten years with the Panchayat. The workmen who were mentioned in the schedule were working on the posts of Chowkidar, Safai Kamdar, Peon and Driver. Said witness specifically deposed before the Labour Court that no benefit has been extended in their favour and they are not getting any benefit from the Panchayat. On behalf of the petitioner, vide ex.42, one witness was examined who admitted before the Labour Court that as per the statement annexed to the statement of claim, from these workmen, work has been taken by the Panchayat continuously and that work is of permanent nature. However, he also admits that there is difference in salary between permanent driver and temporary or HANGAMI driver. He also admits before the Labour Court that additional work is required to be taken from these workmen and that work has been continued since long. He also made it clear that there is no settlement with the Union for grant of certain benefits in favour of the concerned workmen, however, the Panchayat has accepted

the G.R. dated 17.10.1988. Thereafter, the Labour Court has examined the documentary as well as oral evidence produced before the Labour Court by the respective parties in paragraph 7. The Labour Court has considered that from the date of joining, these workmen are working continuously and without any break. Only the label of "daily rated" has been given to these workmen but actually they are working as permanent employees of the Panchayat. That there is no difference in nature of work performed by the permanent and daily wager workmen. The Labour court also appreciated the evidence and came to the conclusion that the work which has been performed by these concerned workmen is permanent work and not additional or HANGAMI work, therefore, considering that part, the Labour Court has come to the conclusion that the petitioner-Panchayat has not granted the benefits in respect of pay and other service benefits to the concerned workmen though from the date of joining they are working permanently without any break and completed more than 10 years' service in that capacity. The Labour court has also taken into account the G.R. dated 17.10.1988. The Labour Court has also considered that after the engagement of these concerned workmen, the Panchayat has not only recruited new employees but these workmen were not made permanent and these are the workmen who have been working since many years and are denied the benefits which are legally admissible to them, therefore, ultimately, considering the fact that when the work is of permanent nature and performed by the workmen continuously for more than ten years, without any break, then they are entitled to the benefit of permanency from the date of joining and also for all consequential benefits, namely, HRA, medical allowance, provident fund, pay scale, bonus, washing allowance, etc. as per rules, and accordingly the Labour Court has granted these benefits. The Labour Court has also considered the relevant decisions produced by the respondent before it wherein in identical matters the Industrial Tribunal, Rajkot, has granted benefit of permanency in favour of such daily wagers. Ultimately, the Labour Court has passed the impugned award granting benefits in favour of the workmen.

#. In the considered opinion of this Court, the Labour Court has rightly appreciated the evidence on record. Further, there is no denial from the petitioner-Panchayat about continuous working of these workmen without any break for more than ten years. Even the Government Resolution date 17.10.1988 grants similar benefits in favour of such daily wagers who have completed more than five years continuously with the establishment.

Therefore, considering the reasoning given by the Labour Court and documentary evidence as well as oral evidence, according to my opinion, the Labour Court has rightly examined the matter and rightly granted benefits in favour of the concerned workmen and for that, the Labour Court has not committed any error which requires interference by this Court while exercising powers under Article 227 of the Constitution of India.

#. In identical matters, the Division Bench of this Court has examined the issue which arose from the award passed by the Industrial Tribunal, Rajkot, in Reference No.374 of 1992 and 91 of 1995. Both these awards ultimately were confirmed by the Division Bench of this Court while dismissing the Letters Patent Appeal filed by the State of Gujarat. Therefore, also considering these two decisions of the Division Bench given in Letters Patent Appeal NO.1199 of 2003 dated 24.11.2003 and Letters Patent Appeal No.605 of 1999 dated 28.12.2001, according to my opinion, Mr.Munshaw, learned counsel for the petitioner is unable to point out any infirmity award or any error committed by the Labour Court while passing the impugned award. Therefore, there is no substance in the present petition and as such, no interference is required at the hands of this Court while exercising discretionary powers under Article 227 of the Constitution of India. Hence, the petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No order as to costs.

(H.K.RATHOD, J.)

(sunil)